


1 Appellants Tony Fu ("Fu") and Bryant Fu ("Bryant") hereby submit the following
2 Excerpt of Records for the appeal.
3

| Document Description | Bankruptcy Court Doc. No. | Date filed | Page |
|--|------------------------------|------------|---------|
| Motion for Leave to Sue the Debtors Trustee | 65 | 12/03/2015 | 1-136 |
| Trustee Opposition to Motion for Leave | 66 | 12/11/2015 | 137-141 |
| Reply of Trustee's Opposition to Motion for Leave | 68 | 12/24/2015 | 142-149 |
| Order Denying Leave to Sue Trustee | 70 | 01/08/2016 | 150-152 |
| Reporter's Transcript of Hearing of 01/08/2016 | | | 153-171 |

15 Dated: January 23, 2016,
16

17 Respectfully Submitted,

18 
19 Tony Fu, Appellant in Pro Per
20

21 
22 Bryant Fu, Appellant in Pro Per
23
24
25

COPY

FILED

DEC - 3 2015

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

1 Tony Fu
2 5813 Geary Blvd., PMB 188,
3 San Francisco, CA 94121
4 (415) 867 - 5973
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6 Bryant Fu
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10 Creditors in Pro Per

11 UNITED STATES BANKRUPTCY COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN FRANCISCO DIVISION

14 In re:

15 DEMAS YAN ("Yan")

16 Debtor

) Bankruptcy Court Case No: 04-33526 TC
) Chapter 7

) Adversary Proceeding No.: 08-03166-TC
) Adversary Proceeding No.: 12-03129-TC

) NOTICE OF MOTION AND MOTION
) FOR LEAVE TO SUE THE DEBTOR'S
) TRUSTEE IN THE UNITED STATES
) DISTRICT COURT

) Date: January 8, 2016
) Time: 9:30 a.m.
) Ctrm: Hon. Thomas Carlson
450 Golden Gate Avenue
San Francisco, California 94102

1 Notice of Motion

2 To Janina Hoskins:

3 NOTICE IS HEREBY GIVEN that on the above mentioned date, place, and time or as
4 soon thereafter as the matter may be heard, Tony Fu ("Fu") and Bryant Fu ("Bryant"), will move
5 the Court for leave to sue the Debtor Demas Yan ("Yan")'s Trustee Janina Hoskins in the United
6 States District Court.

7 This Motion will be based on this notice of motion, on the memorandum of points and
8 authorities, and on the attached copy of the proposed complaint served and filed herein, and on
9 such and other evidence as may be presented at the hearing of the Motion.

10 Dated: December 2, 2015

11 Respectfully submitted,

12
13
14 By: Fu
15 Tony Fu,
16 Creditor in Pro Per

17
18 By: Bryant
19 Bryant Fu,
20 Creditor in Pro Per

21 Memorandum of Points and Authorities in Support

22 Introduction

23 Fu and Bryant hereby move the Court and seek leave of Court for permission to file suit
24 in the United States District Court against the Debtor Demas Yan's Chapter 7 Trustee Janina
25 Hoskins ("the Trustee").

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1 The proposed complaint attached onto this motion specifically shows that the fraud and
2 gross negligent acts the Trustee has done, Fu and Bryant respectfully come before this Court
3 asking for permission for leave to sue the Trustee.

4 This motion is made due to the fact that a bankruptcy trustee is an "officer" of the
5 appointing court. As an officer of the court, the trustee is entitled to a form of derivative judicial
6 immunity from liability for actions carried out within the scope of the trustee's official duties.
7 *Bennett v. Williams*, 892 F.2d 822, 823 (9th Cir.1989); *Mullis v. United States Bankruptcy Court*
8 *for Dist. of Nev.*, 828 F.2d 1385, 1390-91 (9th Cir.1987), *cert. denied*, 486 U.S. 1040, 108 S.Ct.
9 2031, 100 L.Ed.2d 616 (1988); *Jacksen*, 105 B.R. at 544. However, a trustee is entitled to such
10 immunity only if the trustee is acting within the scope of authority conferred upon the trustee by
11 the appropriate statute(s) or the court. *Jacksen*, 105 B.R. at 545 (*citing, Central Transport, Inc. v.*
12 *Roberto (In re Tucker Freight Lines, Inc.)*, 62 B.R. 213, 217 (W.D.Mich.1986)). While a trustee
13 is allowed to make reasonable mistakes where discretion is allowed, a trustee may be sued for
14 intentional or negligent actions which amount to violations of the duties imposed upon the
15 trustee by law. *Bennett*, 892 F.2d at 823; *Hall v. Perry (In re Cochise College Park, Inc.)*, 703
16 F.2d 1339, 1357 (9th Cir.1983). This is exactly what Fu and Bryant intend to do i.e. to
17 complaint against the Trustee's intentional and fraudulent acts along with other defendants.

18 The Trustee's inaction and false claims to the Debtor's lawsuits and appeals attacking
19 Chenery has breached her fiduciary duties in carrying out the administration of the estate.
20 Therefore, 28 U.S.C. § 959(a) shall govern and it should be trial by jury. See *Kashani v. Fulton*
21 *(In re Kashani)*, 190 B.R. 875, 883-85 (9th Cir.BAP1995). Further, leave to sue should be
22 granted due to the fraud (may have associated with the bribe) of the Trustee not to comply with
23 the U.S Trustee Notice/Order, not to "tell" the Debtor to not continue filing lawsuits and appeals
24 because Chenery causes of action was not a post petition, and as a matter of fact, she conspired
25 with the Debtor to claim the Chenery causes of action a post petition.

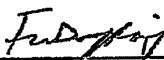
1 Further, the Trustee willful misconducts include concealing the true value of the Debtor's
2 HongKong property and not sending out the notice to Plaintiffs concerning the final distribution
3 to the Debtor in 2011 in deceiving Plaintiffs and others in direct violation of the Statutes, i.e., 11
4 U.S.C. § 1106(a)(3) which provides that: "(a) A trustee shall... (3) except to the extent that the
5 court orders otherwise, investigate the acts, conduct, assets, liabilities, and financial condition of
6 the debtor...." See also, 11 U.S.C. § 1106(a)(4)(A) provides that: "(4) as soon as practicable...
7 (A) file a statement of any investigation conducted under paragraph (3) of this subsection,
8 including any fact ascertained pertaining to fraud, dishonesty, incompetence, misconduct,
9 mismanagement, or irregularity in the management of the affairs of the debtor..." See also, 11
10 U.S.C. § 704(a)(2)(3)(4)(7) provides that "(a) Trustee shall... (2) be accountable for all property
11 received; (3) ensure that the debtor shall perform his intention as specified in section 521
12 (a)(2)(B) of this title; (4) investigate the financial affairs of the debtor; (7) unless the court
13 orders otherwise, furnish such information concerning the estate and the estate's administration
14 as is requested by a party in interest;"

15 **Conclusion**

16 The Debtor's Trustee has breached her fiduciary obligations due to fraud and gross
17 negligence or willful misconduct in the execution of her statutory duties. This Court should
18 grant this motion and permit to file the attached proposed complaint in the United States District
19 Court to be trial by jury.

20 Dated: December 2, 2015

21 Respectfully submitted,

22 By: 
23 Tony Fu, Creditor in Pro Per

24 
25 Bryant Fu, Creditor in Pro Per

1 Tony Fu
2 5813 Geary Blvd., PMB 188,
3 San Francisco, CA 94121
4 (415) 867 – 5973

5 Bryant Fu
6 337 28th Avenue
7 San Francisco, CA 94121
8 (415) 221 – 0969

9 Plaintiffs in Pro Per

10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13

14 Tony Fu,

15 Bryant Fu,

16 Plaintiffs,

17 vs.

18 Janina Hoskins,

19 John Chu,

20 Corporate Counsel Law Group, LLP,

21 Bartholomew Lee,

22 Spiegel Liao & Kagay, LLP,

23 and Does 1-10

24 Defendants.

) Case No.:

) **Complaint For**

) **False Claims, Conspiracy to Defraud and to**
) **Hide Assets;**

) **Fraud and Deceit;**

) **Negligent and Gross Negligent;**

) **Breach Fiduciary Duty.**

) **Request to Trial by Jury**
)
)

Jurisdiction and Venue

1. Jurisdiction. Pursuant to 28 U.S.C. § 1334, this Court has jurisdiction over this complaint because the business transaction or disputes originated in and under the federal bankruptcy proceedings in this district. Debtor Demas Yan ("the Debtor" or "Yan") filed his bankruptcy petition on or about December 2004. The bankruptcy proceedings went on from about 2004 to 2014. The disputes and allegations in this complaint concern mostly the debtor's bankruptcy violations in his filing of frivolous lawsuits in the California Superior Court and appealed them to this Court frivolously and the Debtor's trustee has promoted such filings and prosecutions in bad faith. The trustee has intentionally and knowingly violated the laws and the trustee's duty. The trustee has committed gross negligent acts in performing her trustee duties. The governing law has that the Bankruptcy Court does have jurisdiction over the Debtor's state court lawsuits and appeals because the filing of a bankruptcy petition creates a bankruptcy estate, consisting of all of the debtor's legal or equitable interests in property "wherever located and by whomever held." 11 U.S.C. § 541(a). Thus, "[t]he district court in which the bankruptcy case is commenced obtains exclusive jurisdiction over all of the property in the estate." *Hong Kong and Shanghai Banking Corp., Ltd. v. Simon (In re Simon)*, 153 F.3d 991, 996 (9th Cir.1998). Moreover, this complaint concerns inter alia the false claims defendants made that may be governed under the federal law 31 U.S.C § 3729 et seq. and other applicable laws. Therefore, this complaint shall be adjudicated under the jurisdiction of this Court.
2. Venue. Venue is appropriate in this court because the disputes originated in this district, and a substantial amount of the acts and omissions giving rise to this complaint occurred in this district.

- 1 3. Intradistrict Assignment. This lawsuit should be assigned to the San Francisco Division
2 of this Court because a substantial part of the events or omissions which give rise to this
3 complaint occurred in San Francisco.

4
5 **General Allegations**

- 6 4. Plaintiff Tony Fu ("Fu") is, and at all relevant times was, an individual residing in San
7 Francisco, California, U.S.A. and over the age of 18 year.
- 8 5. Plaintiff Bryant Fu ("Bryant") is, and at all relevant times was, an individual residing in
9 San Francisco, California, U.S.A. and over the age of 18 year.
- 10 6. Fu and Bryant collectively may be called Plaintiffs. Bryant is the assignee of the claims
11 of Wei Suen ("Suen") and Crystal Lei ("Lei"). True and correct copies of the
12 Assignments are attached hereto as Exhibit L & M.
- 13 7. Plaintiffs are informed and believe and thereon allege the following: Defendant Janina
14 Hoskins (her name originally was Janina Elder) ("Hoskins" or "Trustee") is, and at all
15 relevant times was, an individual and as Trustee for the Debtor and conducting business
16 in California. Defendant John Chu ("Chu") is, and at all relevant times was, an
17 individual conducting business in San Francisco, California and he was former attorney
18 for Suen. Defendant Corporate Counsel Law Group, LLP is, and at all relevant times
19 was, a law firm conducting business in California. Defendant Bartholomew Lee ("Lee")
20 is, and at all relevant times was, an individual conducting business in San Francisco,
21 California and he was former attorney for Suen. Defendant Spiegel Liao & Kagay, LLP
22 is, and at all relevant times was, a law firm conducting business in California. The
23 above defendants may collectively be called Defendants.
- 24 8. The true names and capacities of the Defendants sued herein as Doe 1 through 10 are
25 unknown or uncertain to Plaintiffs at this time and therefore each of said Defendants is

1 sued under a fictitious name. Plaintiffs will seek leave of the court to insert the correct
2 names of said Defendants when the names have been ascertained. Plaintiffs are informed
3 and believe and allege thereon that each of the Defendants named herein as Doe
4 participated in the acts set forth in this complaint ("the Complaint").

5 9. Plaintiffs are informed and believe and thereon allege that each of the Defendants was the
6 agent of the others and was acting within the scope of that agency at all times relevant to
7 this matter and that each of the Defendants named in the Complaint defrauded Plaintiffs.

8 10. Plaintiffs are informed and believe and thereon allege that each of the Defendants harmed
9 and/or caused harm directly and/or indirectly to Plaintiffs.

10 11. Yan filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States
11 Code on December 19, 2004. The case was converted to Chapter 7 on September 15,
12 2006. Yan's bankruptcy was a shame. The relevant facts/events are detailed in the
13 Bankruptcy Court's Memorandum re Motion to Dismiss and Order issued on February
14 18, 2011 ("the 2011 Memo") and attached hereto as Exhibit A & B. Please see more
15 relevant facts below:

16 12. From about 2000 to 2003, Fu and the Debtor were partners in a real estate construction
17 and development project located at 663 Chenery Street in San Francisco ("Chenery
18 Property or Project"). Fu, who had been a licensed contractor, but was not one at the
19 time of the development, never agreed to perform services on the Chenery Project as a
20 contractor for hire; instead, Fu's entire involvement in the Chenery Project was as a co-
21 equal investor with the Debtor. Stella Chen ("Chen") was the assignee of a lender to the
22 Debtor who took as security for the loan a deed of trust against the Chenery Project.

23 13. When the Chenery Project was completed and marketed for sale in 2003, in an attempt to
24 prevent Fu from sharing in the profits realized resulting from the sale of the Chenery
25 Project, the Debtor unilaterally expelled Fu from the Chenery Project by initiating a

lawsuit against Fu and Chen in San Francisco Superior Court (case No. CGC-04-428960) on February 2004. This superior court lawsuit was removed to the Bankruptcy Court after the Debtor filed for bankruptcy protection in December 2004.

14. In the Debtor's Superior Court lawsuit, he falsely alleged that he had engaged Fu as a general contractor to work for him without the license that would be required if Fu wished to be paid for his services. The Debtor denied that Fu had ever been his partner, despite the written agreement between them that made clear the nature of their business relationship. In addition to trying to deprive Fu of his partnership share of the profits that would result from the sale of the Chenery Property, the Debtor sought to void Chen's deed of trust against the Chenery estate as well.

15. The Bankruptcy Court issued a judgment and an amended judgment after a multi-day trial in the removed proceeding, and the amended judgment later became the final judgment in 2006. The final judgment ruled that the deed of trust was a separate obligation that Yan, as the ultimate Debtor, was required to repay. The final judgment also specified that "Demas Yan is entitled to no further relief against Stella Chen, Tony Fu or Wei Suen."¹ However, the Bankruptcy Court erred in ruling that (a) Fu acted as an unlicensed general contractor and, therefore, was not entitled to profits or any other compensation from the Chenery Project/Property and (b) Wei Suen ("Suen"), as Fu's assignee, therefore also was entitled to nothing. Suen timely filed an appeal to the district court (case No. CV-06-0508) and the Debtor's Trustee, who was appointed by the Office of the U.S. Trustee on or about May 16, 2006, acted as the Appellee in that appeal on behalf of the Debtor. See the Notice of Appointment ("the Notice") attached hereto as Exhibit C.

¹ Wei Suen was the assignee of Fu's interest in the Chenery Project/Property.

- 1 16. The District Court, on December 12, 2007, issued an Order overturning the Bankruptcy
2 Court's decision, which later became a final judgment in Fu's and Suen's favor.
- 3 17. On January 26, 2006, the Debtor filed another lawsuit in San Francisco Superior Court
4 (case No. CGC-06-448895) against Fu and Crystal Lei ("Lei"), seeking to acquire Lei's
5 interest in a promissory note from an individual named Augustine Fallay and to relitigate
6 the question of whether Fu rendered unlicensed general contractor services in connection
7 with the Chenery Project. On Nov. 15, 2006, Hoskins filed with the Court a "Notice of
8 Appearance of Trustee Janina Elder, Real Party in Interest..." and removed the case to the
9 Bankruptcy Court. The Bankruptcy Court later dismissed the case as meritless.
- 10 18. On June 27, 2007, the Debtor filed yet another lawsuit in San Francisco Superior Court
11 (case No. CGC-07-464671) against Fu and Lei, alleging that Fu had committed fraud on
12 the Debtor with respect to the Chenery Project and seeking to acquire Lei's interest on
13 Lei's residence at 337-28th Avenue, San Francisco, and Fu's interest in a Toyota truck.
14 On November 30, 2007, Hoskins filed with the Court a "Notice of Appearance of Trustee
15 Janina Elder, Real Party in Interest..." and removed the case to the Bankruptcy Court.
16 The Bankruptcy Court also dismissed this case as meritless. See the Notice of
17 Appearance attached hereto as Exhibit O.
- 18 19. In sum, the Debtor has engaged in a pattern of ongoing, relentless, vexatious, and wholly
19 meritless litigation against Fu and virtually anyone associated with Fu, including Bryant,
20 Fu's son (a minor at the time), for a total of thirteen cases outside of the Bankruptcy
21 Court. These are the cases: CCH-04-562167, CGC-04-428960, CGC-05-444856, CGC-
22 06-448895, CGC-07-464671, CGC-07-467500, CGC-08-471333, CGC-08-478194,
23 CGC-08-478815, CGC-09-489340, CGC-08-478364, CGC-10-501321 (cross complaint),
24 and CGC-12-522566.
- 25

1 20. Most of these lawsuits were bad faith attempts to relitigate issues disposed of in the
2 Bankruptcy Court and in the District Court with respect to the various interests in and
3 obligations with respect to the Chenery Property. These cases are: CGC-06-448895,
4 CGC-07-464671, CGC-07-467500, CGC-08-471333, CGC-08-478194, CGC-08-478815,
5 CGC-08-478364, CGC-10-501321 (cross complaint), and CGC-12-522566. The relevant
6 details about some of the cases are as follows:

- 7 a. In CGC-07-467500, the Debtor initiated suit against Fu and others in the San
8 Francisco Superior Court on September 24, 2007, and amended the complaint
9 on September 8, 2009. That suit demanded \$5 million in damages for causes
10 of action solely concerning the various interests in and obligations with
11 respect to the Chenery Property;
- 12 b. In CGC-08-478194, the Debtor initiated suit against Fu and others in the San
13 Francisco Superior Court on August 4, 2008. That suit demanded \$4 million
14 in damages for causes of action solely concerning the various interests in and
15 obligations with respect to the Chenery Property;
- 16 c. In CGC-08-478815, the Debtor initiated suit against Fu and others in the San
17 Francisco Superior Court on August 19, 2008. That suit demanded \$7 million
18 in damages for causes of action solely concerning the various interests in and
19 obligations with respect to the Chenery Property;
- 20 d. In CGC-08-478364, Cheuk Tin Yan ("Cheuk"), the Debtor's father, initiated
21 suit (Plaintiffs believe the lawsuit was manipulated by the Debtor) against Fu
22 and others in the San Francisco Superior Court on March 10, 2010. Cheuk in
23 his verified complaint claimed that he was the owner of the Chenery Property.
24 The suit demanded \$5 million in damages for causes of action solely
25

1 concerning the various interests in and obligations with respect to the Chenery
2 Property;

- 3 e. In CGC-10-501321, the Debtor filed a cross complaint on August 9, 2010, in a
4 lawsuit filed by Fu in the San Francisco Superior Court against the Debtor for
5 defamation causes of action having nothing to do with the Bankruptcy
6 proceeding. The Debtor's cross-complaint demanded of Fu and others \$7
7 million dollars in damages for causes of action solely concerning the various
8 interests in and obligations with respect to the Chenery Property; and
9 f. In the complaint (Case No. CGC-12-522566), the Debtor seeks to overcome
10 and/or attack all of the courts' prior rulings by specifically asking for a
11 Declaratory Relief from the Superior Court of California to grant him relief of
12 the prepetition causes of action from the bankruptcy court and the district
13 court so he could place the San Francisco Superior Court over the U.S. federal
14 courts and attacks these courts' final judgments. Only one result would
15 happen if Plaintiffs and other creditors were not to defend these attacks,
16 millions of dollars in judgments in favor of the Debtor would issue against
17 Plaintiffs and the estate would end up owing the Debtor because the sole
18 estate fund came from selling Chenery and the main portion of the fund was
19 used to pay for the courts judgments that Yan has continued to litigate.
20 Although this case was defeated in the trial court and in the appeal court, Yan
21 has taken it to the Ninth Circuit Court and the appeal statute is currently
22 pending.

23 21. The Debtor's repeat malicious filings and prosecuting the "claims" totaling about 28
24 million dollars for damages with or by the causes of action of Chenery Property against
25 Plaintiffs and other creditors. The Trustee purposefully stopped intervening after her in

1 initial appearance. See the appearance of the Trustee at Exhibit O. Then, *Hoskins falsely*
2 *claimed that it was non of her business and even claimed those causes of action were*
3 *ambiguous and post petition.*

4 22. Hoskins knew and should have known that the Debtor's bad faith filings and prosecutions
5 were in repeated violations of the automatic stay affecting the bankruptcy estate.
6 Although she has an obligation to investigate or to intervene in the lawsuits or at the very
7 least to file a report for such violations, rather, she breached her official duty i.e. faithful
8 performance of the trustee duty, and ignored the request of Fu and others and show not
9 only indifference to the Debtor's violations but also made false statements to the Court to
10 help the Debtor to reverse Plaintiff's Judgment on the Pleadings. See the false statement
11 of Joanne, attorney for the Trustee, attached hereto as Exhibit S, the warning from Fu as
12 Exhibit P & R, and Judgment on the Pleadings as Exhibit D.

13 23. Undeterred by multiple sanctions and judicial decisions, in particular, the Debtor ignored
14 the Court Order to dismiss cases CGC-07-467500, CGC-08-478364, and CGC-08-
15 478815, entered against him, he further refused to dismiss these meritless lawsuits until
16 after the Court issued a Contempt Order against him.

17 24. Back by Hoskins' "faithful performance" of not intervening in Yan's bad faith filings and
18 prosecutions, Yan ignored the Contempt Order and filed yet another superior court
19 lawsuit (case no. CGC-12-522566) against Plaintiffs and others. Without such "faithful
20 performance," Yan would not have dared to file this frivolous lawsuit. This lawsuit was
21 dismissed by the Bankruptcy Court and by the District Court as an appeal court as well
22 and is currently on appeal to the Nine Circuit Court by Yan.

23 25. The Bankruptcy Court, on December 23, 2013, issued an Order determining Yan to be a
24 vexatious litigant and the State Court issued the similar Order against him on April, 2015
25 as well. Subsequently, the Ninth Circuit Court of Appeal issued an Order against Yan's

another appeal to the Ninth Circuit Court as “frivolous” and “wholly without merit” and award Plaintiffs and its associates attorneys fees and double cost in the amount of \$35,004.71. The Ninth Circuit Court of Appeal Order is attached hereto as Exhibit G.

26. Not only had Plaintiffs experienced devastating emotional suffering in defending all these meritless and bad faith lawsuits, Plaintiffs have suffered huge attorney fees and costs as a result of the Yan’s willful and deliberate misconducts. Yan’s practice of filing or generating lawsuits against Plaintiffs and others on “specious” or “novel” theories occurred both before and after Yan became licensed to practice law. Although Yan was suspended by the State Bar of California due to professional misconduct for one year and now still on probation, his bad faith and abusive practices in his vexatious litigations have continued unabated. Order Granting Terminating Sanctions is one of the good examples to stop the Yan’s abusive practice. This example is attached hereto as Exhibit T.

27. The Order show that Yan used Fang, his wife, to aid and abet his fraudulent transfer of assets and properties of 1.5 million. Yan could not succeed in doing all of the above without the help from Hoskins “faithful performance.”

28. Yan is the mastermind in conducting various frivolous lawsuits against Plaintiffs. Yan have abused the legal system by claiming indigence to get waiver of court fees for most of the above cases despite the fact that he had earned or gotten \$175,039.59 on or about November 8, 2011 by conspired with his “own” bankruptcy trustee and he has been very profitable in his various businesses.

29. The lawsuits Yan and his father filed and prosecuted mentioned above were conducted in such bad faith that no normal person could have experienced such a horrible situation Plaintiffs were forced in. Yan and his father willfully multiplied lawsuits with ill-faith and malicious purposes. For example, Yan and his father caused the filing of 3 lawsuits with malice against Plaintiffs and others in the San Francisco Superior Court within about

1 15 days interval in one particular month on August 2008 (cases number being CGC-08-
2 478364, CGC-08-478194 and CGC-08-478815 respectively). Plus an existing case CGC-
3 08-467500 filed on September 24, 2007, Cheuk and Yan had filed a total of 4 lawsuits
4 and placed 3 lis pendens onto Lei's home at a given time to overwhelm and to harass
5 Plaintiffs. Plaintiffs were saddled and suffered from extraordinary pain mentally and
6 economically.

7 30. The Yan and his father lawsuits here were not just mean-spirited or boorish; rather its
8 conduct reflected *a calculated plan* to conduct wave after wave of attacks with bad faith
9 lawsuits meant to destroy Plaintiffs and anyone associated with Plaintiffs. Bryant was a
10 minor at the time when he was named and attacked with these bad faith and frivolous
11 lawsuits. Yan and his father acted willfully, maliciously, oppressively, recklessly, and
12 with a conscious disregard for Plaintiffs rights and caused Plaintiffs serious financial and
13 emotional harms and damages.

14 31. As alter egos of each other, Yan and his father have subsequently prosecuted total of 6
15 frivolous appeals with improper purpose inter alia to delay the final resolution of the
16 lawsuits and to gain the time needed to effectuate the fraudulent transfer of assets and so
17 forth. Further, they effectuated and conducted the frivolous appeals as a weapon to
18 further destroy Plaintiffs with the unnecessary expenses and emotional suffering.

19 32. Ultimately, after defeating Yan and his father's about six appeals, Plaintiffs successfully
20 received from the Ninth Circuit Court an award of attorney fees in the amount of
21 \$35,004.71 against Yan. The Court properly ruled that Yan's prosecution is "frivolous,"
22 "wholly without merit," and "sufficiently rooted in the pre-bankruptcy...and are properly
23 included as property of the bankruptcy estate under § 541. *Segal v. Rochelle*, 382 U.S.
24 375, 380 (1966)." But the Trustee continued to claim otherwise. See the Ninth Circuit
25 Court Order attached hereto as Exhibit G.

1 33. The above mentioned malicious prosecutions, in particular, the frivolous appeal certified
2 by the Trustee to be post petition and that involved false certification which shall subject
3 to prosecution under 31 U.S.C. § 3729. Under the Act. 31 U.S.C. § 3729(b), a person
4 who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the
5 information, can be found liable.

6
7 **First Claim for Relief: False Claims, Conspiracy to Defraud and to Hide Assets**

8 (Against All Defendants)

9 34. Plaintiffs incorporate the allegations of each and every paragraph above as though fully
10 set forth here. Upon information and believe, Plaintiffs allege the following:

11 35. At all times herein mentioned, the Debtor and his father were alter egos of each other and
12 acted in concert and conspired with and/or aided and abetted each other to do the acts to
13 cause harms to Plaintiffs. Yan is the mastermind in conducting various frivolous lawsuits
14 against Plaintiffs. Yan has abused the legal system by claiming indigence for waiver of
15 court fees for most of the above mention cases despite the fact that he had earned or
16 gotten \$175,039.59 on or about November 8, 2011 by conspired with his "own"
17 bankruptcy Trustee and he has been very profitable in his various businesses. Yan also
18 cheated the U.S. government fund with fake unemployment claims.

19 36. While representing his father maliciously prosecuting Plaintiffs, Yan falsely certified that
20 his father was the owner of Chenery Property. This was an indirect attack the bankruptcy
21 estate and the Trustee seem okay with it. If his father were the owner, he must have
22 incurred property tax liability which he must have it evaded.

23 37. In order to destroy Fu, Yan falsely created material facts and asked his then good friend
24 to back him up for a defamation complaint against Fu. Please see the Declaration of
25 Martin Eng attached hereto as Exhibit H.

1 38. Yan conspired with Hoskins to effectuate a false claim which at the time deceived not
2 only all of the creditors but also the Bankruptcy Court that the Yan property value in
3 HongKong has about only \$12,500. But the true value of the property shows up about
4 one million in the HongKong official report. See the Trustee's Individual Estate Property
5 Record and Report attached hereto as Exhibit K and the HongKong official report
6 concerning the subject property as Exhibit J.

7 39. Hoskins allowed the Debtor's wife, Fang, keeping the Yan's 1.5 million dollars estate in
8 2007 without even reporting it to the Court, allowed Fang to avoid the property tax
9 liabilities and such material fact has been concealed and covered up until this Superior
10 Court Order was issued. The Superior Court Order is attached hereto as Exhibit T at p.3.
11 No doubt, Fang has evaded this 1.5 million dollars in property tax liabilities due to the
12 "faithful performance" of the Trustee.

13 40. Yan conspired with Hoskins inter alia to make false report and to conduct illegal acts
14 which shall subject to prosecution under 31 U.S.C. § 3729 and other applicable laws.

15 41. Lee and Chu intentionally and willfully gave false legal advices and provided defective
16 legal services to their client. Lee even at a time threatened his client who would end up
17 with nothing if his client insisted on his supposedly full recovery of \$900,000. Such
18 threat was made in bad faith and fraud. Further, when his client, Suen, insisted on his
19 pursue of this about \$900,000 recovery, Lee falsely claimed that the Debtor did not have
20 enough fund for it.

21
22 **Second Claim for Relief: Fraud and Deceit**

23 (Against All Defendants)

24 42. Plaintiffs incorporate the allegations of each and every paragraph above as though fully
25 set forth here. Upon information and believe, Plaintiffs allege the following:

1 43. The preliminary report reviews that Yan has hid his assets and money in the hands of
2 his father, Cheuk, and his wife, Fang, while he was in bankruptcy proceedings. See the
3 preliminary report at Exhibit N. See also the Superior Court Order at Exhibit T showing
4 that Fang help Yan to hide 1.5 million to defraud creditors, such as Plaintiffs. Yan must
5 have conspired with Cheuk and Fang to defraud Plaintiffs because he knew that sooner or
6 later Plaintiffs would come after him for huge amount of attorney fees and other costs for
7 his frivolous and malicious prosecutions. The two orders, attached hereto as Exhibit D &
8 E, indicated such real possibilities. No doubt, Yan also conspired with other defendants
9 to help him to avoid such consequences.

10 44. Yan also conspired with Hoskins to under report his HongKong property value. See
11 Exhibit J & K. They knew that hiding the true value of the property would mislead
12 creditors and Plaintiffs alike to not fight for or maximize their entitled recovery or rights.

13 45. Hoksins later did not intervene or even promote Yan's lawsuits claiming post petition
14 despite the fact that the Yan lawsuits were all about Chenery. Her obvious gross
15 negligent in performing her trustee duties is largely associated with the bribe (Yan bribe
16 her attorney, Joanne). See Eng's declaration at Exhibit I.

17 46. Chu and Lee knowingly and intentionally gave bad legal advices and provided defective
18 legal services to their client and they knew that would cause irreparable harm to their
19 client. At a time Lee even threatened his client who would end up with nothing when his
20 client want full recovery i.e. \$900,000 (instead of the \$500,000 proposed by the Trustee).
21 Such threat was made in bad faith and fraud. Further, when his client, Suen, insisted on
22 his pursue of about \$900,000 recovery, Lee falsely claimed that the Debtor did not have
23 enough fund for it. The bribe Chu and Lee took from Yan was fraud and fraud on the
24 court and that they completely betrayed their client and caused him harm and violated his
25 rights. Their law firm should jointly and severally liable for their misconducts.

1 47. Defendants' acts and omissions fell far below the standard for a normal law firm and
2 attorneys or trustee and were the direct and proximate cause of the resulting injuries to
3 Plaintiffs. The Defendants false legal claims and unlawful conducts constituted
4 oppression, fraud, and/or malice.

5 48. As a proximate and direct result of defendant's breaches as herein alleged, Plaintiffs were
6 harmed. Had defendants not committed such and/or other breaches or violations,
7 Plaintiffs would not have suffered the harms and damages alleged herein. Each and all
8 defendants shall jointly and severally be held liable to such harms Plaintiffs have
9 suffered.

10 49. Defendants' acts were deliberate, willful, malicious, oppressive and done with conscious
11 (as they are professional attorneys/trustee and are held to have master knowledge of the
12 law) disregard for Plaintiffs' rights justifying an award of exemplary and punitive
13 damages in an amount to be determined by the court of law.

14
15 **Third Claim for Relief: Negligent and Gross Negligent**

16 (Against Hoskins)

17 50. Plaintiffs incorporate the allegations of each and every paragraph above as though fully
18 set forth here. Upon information and believe, Plaintiffs allege the following:

19 51. Hoskins willfully and deliberately ignored the U.S. Trustee's Notice to obtain a trustee
20 bond in the amount of \$3,500,000. The Notice is attached hereto as Exhibit C.

21 52. This negligent act exposed creditors and interested parties in serious danger. Although
22 there is a copy of the trustee blanket bond filed with the Office of the U.S. Trustee,
23 Hoskins has not filed the required trustee bond with the Clerk of Bankruptcy Court for
24 Debtor Yan's case.
25

1 53. Plaintiffs are informed and believe and on that basis claims that the Hoskins is
2 responsible for the pending appeals and those past Superior Court lawsuits filed by the
3 Debtor attacking Chenery. Among them, the 3 lawsuits, in particular, filed by the Debtor
4 against Plaintiff and other creditors under the main cause of actions of "the Chenery
5 breach" in the San Francisco Superior Court. The incidents happened within about 15
6 days in the month of August 2008, when the Debtor filed the following cases: CGC-08-
7 478364 (the case was for and in the name of the Debtor's father, Cheuk Tin Yan, who
8 claimed ownership of Chenery Property), CGC-08-478194, and CGC-08-478815. Plus an
9 existing case at the time (CGC-08-467500), which was filed on September 24, 2007, it
10 added up to 4 lawsuits at a given time to overwhelm and to harass Plaintiff and other
11 creditors and interested parties.

12 54. Hoskins has repeatedly refused to intervene in these complaints even though the
13 complaints specifically attack Plaintiffs by the use of Chenery causes of action even after
14 the Court found those filing were in bad faith and ordered the Debtor to dismiss them.
15 See the Court rulings attached hereto as Exhibit A, B, E, F, and G. When the Debtor
16 refuses to do so, Plaintiff demanded Hoskins to dismiss those meritless cases base on the
17 Court Order, Hoskins, however, continued to ignore Plaintiff's justly demand despite the
18 fact that her duty or statutorily requirements require of her at least to report such
19 misconduct to the Court or using Hoskins' attorney's own word which was to "tell" the
20 Debtor to dismiss those cases. Plaintiff's demand is attached hereto as Exhibit P & R and
21 the transcript of proceedings showing the false statement of the Trustee's attorney as
22 Exhibit S. Hoskins willfully and intentionally represented incorrect material fact to
23 mislead the Court and other creditors including Plaintiffs to the advantage of the Debtor.
24 The asset Debtor Yan has in HongKong contained a more than one million (HK dollars)
25 in value, but when it was on the hands of Hoskins, it became only twelve thousand five

1 hundred (\$12,500). The Debtor's HK house value attached hereto as Exhibit J and
2 Hoskins valuation as Exhibit K.

3 55. Hoskins, as trustee, owed a professional duty to use the skill, prudence, and diligence as
4 other members of her profession commonly possess and exercise. These duties, which
5 arise under the standard of care, include but are not limited to properly investigate the
6 lawsuits the Debtor filed and take proper legal action under the given circumstance.

7 56. Now, Ninth Circuit Court Order clearly impeached Hoskins statements concerning the
8 Debtor's lawsuits. Her statements about the Debtor's lawsuits had nothing to do the
9 estate were false and intentional misrepresentation in order to justify her no action to
10 those lawsuits. This is gross negligent acts.

11 57. Such gross negligent acts have caused Plaintiffs suffered irreparable harms. These gross
12 negligent acts were in violation of the trustee duties and laws, including but not limit to,
13 11 U.S.C. § 1106(a)(3), 11 U.S.C. § 1106(a)(4)(A), 11 U.S.C. § 704(a)(2)(3)(4)(7), 11
14 U.S.C. § 523(a)(6), 11 U.S.C. § 554(a)(d), and 11 U.S.C. § 1302(b)(1).

15
16 **Fourth Claim for Relief: Breach Fiduciary Duty**

17 (Against Hoskins, Chu and his law firm, and Lee and his law firm)

18 58. Plaintiffs incorporate the allegations of each and every paragraph above as though fully
19 set forth here. Upon information and believe, Plaintiffs allege the following:

20 59. In violation to the above mentioned laws, Hoskins was indifferent and showed no
21 fiduciary responsibility in her role as trustee to Plaintiffs and other creditors. Why? See
22 the attach declaration of Martin Eng ("Eng") which would provide an answer and the
23 declaration is attached hereto as Exhibit I. Yan was the former personal attorney and
24 good friend to Eng. Eng disclosed the secrete "deal" between the Debtor and his trustee's
25 attorney and other individuals. With so much to hide and to violate Plaintiffs' rights,

1 Hoskins was inter alia intentionally not sending out notice to Plaintiffs and interested
2 parties with regard to the final distribution in 2011. Hoskins knowingly in violation to 11
3 U.S.C. § 523(a)(6) in this regard.

4 60. Plaintiffs believe and on that basis claims that the Hoskins's refusal to intervene the
5 lawsuits attacking Plaintiffs by the use of Chenery causes of action was not a simple
6 "judgment call" or "discretion." Instead, it was willful and deliberate acts that was fraud
7 on the court and gross negligence. The refusal to resume the trustee responsibility as the
8 sole representative for the causes of action of Chenery was retaliatory and in absolute bad
9 faith against Plaintiffs.

10 61. In addition to Hoskins' willful and deliberate acts in providing incorrect statements in
11 official documents and court hearings that the Debtor's lawsuits applying cause of actions
12 of Chenery were ambiguous and post petition and so forth, she knew very well that the
13 Debtor's act or acts are prohibited act or acts, in particular, in repeat violation of the
14 automatic stay. Applicable laws or statutorily duty require Hoskins to stop the Debtors'
15 abuses, or at the very least, to report the Debtor's misconduct to the Court; rather, she
16 instruct her attorney to speak for the Debtor resulting the Court to reverse its Order which
17 was the Judgment on the Pleading at Exhibit D. Hoskins willfully and deliberately
18 disregarded the laws or statutes or her duties and continuously exposed Plaintiffs and
19 other creditors and the estate in harm's way.

20 62. From the Eng declaration, Plaintiffs understand now why Chu, Lee, and Hoskins at the
21 time defrauded Plaintiffs because Chu, Lee, and Joanne simply had taken the bribe from
22 Yan.

23 63. Chu and Lee owed a professional duty to use the skill, prudence, and diligence as other
24 members of their profession commonly possess and exercise. These duties arise under
25

1 the standard of care including but not limited to properly advising clients truthfully of the
2 proper legal action to be taken under any given circumstance.

3 64. However, the superior legal knowledge and skills the Chu and Lee possessed were used
4 to the detriment of their client and were used to cover up and/or concealment of their
5 defective legal practices or wrongful acts.

6 65. When Suen relied on Chu and Lee's false legal advices and defective legal services, he
7 resulted in irreparable harms.

8 66. Suen assumed Chu and Lee and their law firms' legal services were appropriate and
9 correct and fully relied on them, but, he later discovered and found that substantial
10 amount of the legal services provided to him were serious defective and harmed and/or
11 caused harmed to him. Chu and Lee's acts and omissions fell far below the standard of
12 care owed and were the direct and proximate cause of the resulting injuries to Suen. The
13 false legal advices inter alia constituted oppression, fraud, and/or malice. Bryant, as
14 assignee of Suen, should entitle to injunctive relief against Chu and Lee and their law
15 firms named in this Complaint.

16 67. Defendants' acts were deliberate, willful, malicious, oppressive and done with conscious
17 (as they are professional attorneys and are held to have master knowledge of the law)
18 disregard for Plaintiffs' rights justifying an award of exemplary and punitive damages in
19 an amount to be determined by the court of law.

20 **Prayer**

21 Plaintiffs pray an order against Defendants as follows:

22 For an Order finding that Defendants committed fraud and other causes of action stated
23 above harmed Plaintiffs directly and/or indirectly and Defendants are liable for Plaintiffs'
24 emotional and economic damages;
25

1 For general damages in the amount the Court deems fair and proper against each of the
2 Defendants;


3 For specific damages, including but not limit to emotional suffering, according to proof;

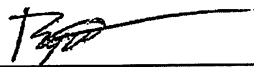
4 For costs of suit herein incurred including but not limited to attorney fees, and

5 For such other and further relief as the court may deem proper.

6 Dated: December 1, 2015

7
8 Respectfully submitted,

9
10 By: 
11 Tony Fu,
12 Plaintiff in Pro Per

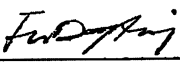
13 
14 Bryant Fu,
15 Plaintiff in Pro Per

16 VERIFICATION

17 We verified that the above Complaint is true and correct to the best of my personal
18 knowledge. We have proof read for error and understand its contents.

19 Dated: December 1, 2015

20 Respectfully submitted,

21 
22 Tony Fu,
23 Plaintiff in Pro Per

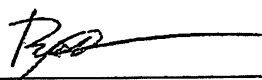
24 
25 Bryant Fu,
Plaintiff in Pro Per

Exhibit Index

- Exhibit A: Memorandum re Motion to Dismiss, February 18, 2011
- Exhibit B: Order re Motion to Dismiss, February 18, 2011
(Bankruptcy Court)
- Exhibit C: Notice of Appointment of Chapter 11 Trustee, Janina M. Elder
(U.S. Trustee)
- Exhibit D: Judgment on the Pleading, February 26, 2009 (Bankruptcy)
- Exhibit E: Order re Motion for Order re Dismissal of Superior Court Cases
and for Permission to File Motion for Fees and Sanction
(Bankruptcy)
- Exhibit F: Order Affirming Decision of Bankruptcy Court (District Court)
- Exhibit G: Order and Memorandum, March 18, 2014 (9 Cir. Court)
- Exhibit H: Declaration of Martin Eng, August 19, 2013
- Exhibit I: Declaration of Martin Eng, January 23, 2015
- Exhibit J: The Land Registry (Hong Kong)
- Exhibit K: Individual Estate Property Record and Report Asset Cases
- Exhibit L: Assignment of Claims and Causes of Action (Wei Suen)
- Exhibit M: Assignment of Claims and Causes of Action (Crystal Lei)
- Exhibit N: Preliminary Report for Property at 242-248 5th Avenue, S.F.
- Exhibit O: Notice of Appearance of Trustee, Janina M. Elder
- Exhibit P: Tony Fu Letter of Nov. 23, 2009 to Janina Elder
- Exhibit Q: Janina Elder's Response to the Nov. 23, 2009 Letter
- Exhibit R: Tony Fu Letter of October 21, 2011 to Janina Hoskins
- Exhibit S: Transcript of Proceedings for April 3, 2009 Hearing
- Exhibit T: Order Granting Terminating Sanctions, November 4, 2015
(Superior Court)

Exhibit A

Entered on Docket
February 22, 2011
GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: February 18, 2011


THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re:

DEMAS WAI YAN, aka DENNIS YAN,

Debtor.

CRYSTAL LEI,

Plaintiff,

vs.

DEMAS WAI YAN,

Defendant.

TONY FU,

Plaintiff,

vs.

DEMAS YAN,

Defendant and Cross-Plaintiff,

vs.

TONY FU; aka DONG XING FU; CRYSTAL LEI,
aka LI MING LEI; STELLA HONG CHEN, aka
HONG XING FU, aka HONG XING CHEN;
BRYANT FU; and WEI SUEN,

Cross-Defendants.

Case No. 04-33526 TEC

Chapter 7

Adv. Proc. No. 10-3149 TC

Adv. Proc. No. 10-3152 TC

MEMORANDUM RE MOTIONS TO
DISMISS, MOTION TO REMAND,
AND REVOCATION OF ORDER
ABANDONING CERTAIN ASSETS
TO DEBTOR

EXHIBIT A

-1-

1 This bankruptcy case has been pending before the court for more than six years. A trustee
2 was appointed more than four years ago. The assets of the estate have been liquidated and all
3 allowed claims have been paid in full with interest. What remains before the court are a series of
4 lawsuits in which Debtor seeks to assert legal claims that have been previously adjudicated against
5 him by this court, have been released by the trustee, or may be asserted only by the trustee. For the
6 reasons set forth below, the court dismisses with prejudice the claims released by the trustee or
7 previously resolved against Debtor. With respect to the remaining claims that passed to the
8 bankruptcy estate, the court vacates its prior order abandoning those claims to Debtor, and
9 determines that such claims shall not be abandoned to Debtor upon closing the case.¹

10 This memorandum shall constitute the court's findings of fact and conclusions of law.

11 **FACTS**

12 **1. Debtor-Fu Joint Venture**

13 In February 2000, Debtor Demas Yan purchased a single-family residence at 663 Chenery
14 Street, San Francisco (the Chenery Property). On October 18, 2000, Debtor and Tony Fu entered
15 into a written joint-venture agreement, which provided that Debtor was to contribute the Chenery
16 Property and costs of construction up to \$300,000 in return for 75 percent of the sale proceeds, while
17 Fu was to supervise construction and supply all additional costs of construction in return for 25
18 percent of the sale proceeds. Fu later assigned all of his rights under the joint venture agreement to
19 Wei Suen.

20 **2. Secured Promissory Note from Debtor to Stella Chen**

21 On November 12, 2002, Debtor executed a promissory note in favor of Stella Chen in the
22 amount of \$450,000 (the Chen Note), secured by a deed of trust against the Chenery Property (the
23 Deed of Trust). The Chen Note was given in consideration of a loan Debtor obtained from a friend
24 or relative of Chen in February 2002.

25
26
27 ¹ Because this is a surplus case, this court previously ordered abandoned to Debtor
28 prepetition claims owned by Debtor before the petition date, which passed to the estate upon the
filing of the petition. Because Debtor has abused the bankruptcy process in the various ways
described in detail below, the court vacates the abandonment order, and will enter an order
preventing such claims from being abandoned to Debtor upon the closing of the case.

1 3. Pre-Petition Litigation, Voluntary Bankruptcy Petition, and Sale of the Chenery Property

2 On February 20, 2004, Debtor filed an action against Chen, Fu, and Suen in the San
3 Francisco Superior Court seeking, *inter alia*, cancellation of the Chen Note and quiet title to the
4 Chenery Property (Debtor's Prepetition Action).

5 On December 19, 2004, after the San Francisco Superior Court denied Debtor's motion to
6 stop Chen's foreclosure of the Chenery Property, Debtor filed for chapter 11 bankruptcy relief.
7 Protected by the automatic stay, Debtor was able to sell the Chenery Property in the chapter 11 case
8 free and clear of liens and claims at a price sufficient to pay all allowed secured and unsecured
9 claims. Chen's secured claim and Fu's asserted joint-venture interest attached to the sale proceeds.

10 4. The Bankruptcy Court Judgment

11 On January 25, 2005, Chen filed an adversary proceeding against Debtor in this court to
12 determine the enforceability of the Chen Note and the Deed of Trust.

13 On March 17, 2005, Chen removed Debtor's Prepetition Action to this court. The
14 bankruptcy court consolidated the removed action with the Chen adversary proceeding.

15 On March 3, 2006, this court entered a judgment that determined the parties' respective legal
16 rights regarding the Chenery Property (the Bankruptcy Court Judgment). This court awarded Chen
17 \$767,655, which included principal, prejudgment interest, attorney fees, and costs. The court
18 determined that Debtor had no enforceable obligation to Fu or Suen, and that Fu, Suen, and Chen had
19 no obligation to Debtor.

20 5. Appeals of the Bankruptcy Court Judgment

21 Chen appealed the bankruptcy court's disallowance of part of her claim for prejudgment
22 interest and attorneys fees. Chen later settled this appeal (*see infra* p. 4).

23 Suen appealed the bankruptcy court's determination that Fu was barred by Cal. Bus. & Prof.
24 Code § 7031 from sharing the joint-venture proceeds because he was an unlicensed contractor. Suen
25 prevailed on appeal. The District Court held that Fu had an enforceable claim to a share of the
26 Chenery sale proceeds and that Suen was entitled to Fu's share. Suen later reached a settlement
27 regarding the amount of these proceeds (*see infra* p. 6). The District Court decision did not disturb
28 the bankruptcy court's determination that Debtor had no enforceable claim against Fu arising out of
the joint venture.

1 Fu did not appeal the Bankruptcy Court Judgment. Debtor's appeal of the Bankruptcy Court
2 Judgment was dismissed.

3 6. Trustee Becomes Estate Representative

4 On May 12, 2006, the bankruptcy court ordered the appointment of a trustee. The United
5 States Trustee selected Janina M. Hoskins² to serve as the chapter 11 trustee (Trustee).

6 7. Claims Filed Against the Estate by Crystal Lei

7 Fu's ex-wife, Crystal Lei, filed two proofs of claim against the bankruptcy estate. On March
8 29, 2006, Lei filed a general unsecured claim (no. 11) in the sum of \$67,937, based on Debtor's
9 alleged breach of contract. On October 13, 2006, Lei filed a second unsecured claim (no. 16) in the
10 sum of \$88,111, based on Debtor's alleged failure to repay an installment note.

11 8. Trustee's Settlement with Chen

12 On July 24, 2006, this court entered an order approving a settlement between Trustee and
13 Chen. The settlement resolved Chen's appeal regarding the amount due under the Chen Note. The
14 settlement agreement required Trustee to pay Chen \$818,198, and provided that the parties to the
15 agreement released all claims against each other. Agmt, ¶¶ 2, 5, and 6. Specifically, the release
16 provides that:

17 the respective Parties to this Agreement, each acting on . . . her own behalf . . . do
18 forever discharge the other . . . in all capacities, including individually, from any and
19 all actions, liabilities, . . . claims, [etc.] of every kind, nature and description,
20 including, but not limited to, tort, arising out of the facts alleged with regard to the
Chen Proceeding. The Parties acknowledge and agree that *the foregoing releases*
shall extend to any and all adversary proceedings, proofs of claim or any other claims
by or against any Party hereto, their assignors and the Debtor.

21 *Id.*, ¶ 5 (emphasis added). The settlement also includes a waiver of each party's rights under
22 California Civil Code § 1542. No one appealed from the order approving the Chen settlement.

23 9. Conversion to Chapter 7 and Discharge of Debtor

24 On September 15, 2006, the court ordered the case converted to chapter 7. Ms. Hoskins
25 continued to serve as Trustee. On June 26, 2007, the court entered Debtor's discharge.

26
27
28 ² When appointed to serve as Trustee, Ms. Hoskins' name was Janina M. Elder. Ms.
Hoskins' name changed from Janina M. Elder to Janina M. Hoskins on December 1, 2010.

10. Debtor's Unauthorized State-Court Actions Asserting Prepetition Claims Owned by Trustee

On July 2, 2007, without permission of this court or Trustee, Debtor filed an action against Lei and Fu in San Francisco Superior Court³ (the First State Court Action). That action asserted claims for fraud, quiet title, and conversion based on prepetition events regarding the Chenery Property and Lei's prepetition purchase of real property on 28th Avenue in San Francisco.

On July 26, 2007, Trustee removed the First State Court Action to this court.⁴ On January 8, 2008, this court dismissed with prejudice the claims asserted against Fu in the removed action on the grounds that they were barred by the preclusive effect of the Bankruptcy Court Judgment. The court dismissed Debtor's claims against Lei without prejudice on the basis that they could only be asserted by Trustee.

On September 24, 2007, Yan filed another action against Lei and Fu in San Francisco Superior Court, this one for libel and slander, based upon postpetition, postconversion statements allegedly made by the defendants (the Second State Court Action).⁵ Although the original complaint in the Second State Court Action alleged only claims arising postconversion, Debtor's second amended complaint filed in March 2010 alleges only prepetition claims for breach of fiduciary duty, unjust enrichment, and fraudulent transfer. Each claim in the second amended complaint arises out of prepetition conduct re the Chenery Property--the same nucleus of operative facts as that involved in the Bankruptcy Court Judgment.⁶ The second amended complaint in the Second State Court Action attempts to skirt the prepetition nature of the claims by alleging that Debtor did not discover the facts underlying his claims until November 2006. As of February 2011, the Second State Court Action is still pending.

³ Case No. 07-464671.

⁴ Adv. Proc. No. 07-3082.

⁵ Case No. 07-467500.

⁶ Debtor filed the second amended complaint after the court entered the order abandoning prepetition claims to Debtor. However, his filing of the second amended complaint was wrongful, because the complaint asserts only prepetition claims that were released by Trustee or barred by the preclusive effect of the Bankruptcy Court Judgment. See *infra* p. 11.

1 On January 24, 2008, again without permission of this court or Trustee, Debtor filed another
2 action against Lei and Fu in the San Francisco Superior Court (the Third State Court Action).⁷ The
3 complaint alleges that, sometime before February 2001, Debtor hired Lei and Fu to provide
4 construction services at 547 23rd Avenue and the Chenery Property, that Debtor paid Lei and Fu for
5 such services, and that Debtor was entitled to recoup such payments under state law because Lei and
6 Fu were not licensed contractors. On July 16, 2008, Debtor dismissed this action without prejudice.

7 11. Trustee's Settlements with Suen and Lei

8 On March 4, 2008, the court approved Trustee's settlement with Suen,⁸ which was read into
9 the record at a mediation before Magistrate Judge Edward Chen in February 8, 2008. The Suen
10 settlement provides that the parties mutually agree to waive:

11 any and all claims arising out of this particular transaction [Chenery Property], that is,
12 the subject matter of this case and . . . include[s] a waiver of all claims known or
13 unknown arising up through and including today, and the parties would waive their
14 rights under California Civil Code section 1542.

15 (emphasis added). No appeal was taken from the order approving the settlement.

16 On May 29, 2008, the court approved a settlement between Trustee and Lei. The Lei
17 settlement agreement required Trustee to pay Lei \$45,000 in satisfaction of Lei's proofs of claim and
18 included broad, mutual releases of all claims (known and unknown) by Lei and Trustee. Agmt. ¶¶ 2,
19 4-5. The release provides in relevant part:

20 the respective Parties to this Agreement, each acting on her own behalf . . . do forever
21 discharge the other . . . in all capacities, including individually, from any and all
22 actions, liabilities, liens, debts, damages, torts, claims, suits, judgments, executions
23 and demand of every kind, nature and description, arising in the Case, and relating to
24 the assets, liabilities and administration of the Case and Estate. The Parties
25 acknowledge and agree that the foregoing releases extend to adversary proceedings
26 and proofs of claim in the Case.

27 Id., ¶ 4 (emphasis added). The Lei settlement includes a waiver of California Civil Code § 1542, and
28 a clause entitling the prevailing party to recover attorneys fees related to enforcement of the
29 settlement. Id., ¶ 12. No one appealed from the order approving the Lei settlement.

30 Thus, by June 2008, Trustee had released all of the estate's prepetition claims against Chen,
31 Suen, and Lei.

32 ⁷ Case No. 08-471333.

⁸ Docket No. 299, Case No. 04-33526.

1 12. State Court Action by Debtor's Father

2 On August 7, 2008, Debtor's father Cheuk Yan (Debtor's Father) filed an action against Lei
3 and Fu for fraud, quiet title, conversion, and unjust enrichment in the San Francisco Superior Court
4 (the Cheuk Yan Action).⁹ The complaint is virtually identical to the complaint filed by Debtor in the
5 First State Court Action and concerns the same prepetition events regarding the Chenery Property.
6 The only material difference between the First State Court Action and the Cheuk Yan Action is the
7 substitution of Debtor's Father for Debtor as plaintiff.

8 At a deposition, Debtor's Father testified that: (1) he did not know Lei; (2) he did not believe
9 Lei owed him money; (3) he was unaware of the majority of the factual allegations in the complaint
10 filed in the Cheuk Yan Action; (4) that he cannot read or write English; and (5) that he had not read
11 any of the pleadings he filed, and just signed the pleadings because Debtor told him to.¹⁰

12 13. Approval of Final Account and Payment of All Claims

13 On March 18, 2009, this court approved Trustee's final account, which provided for payment
14 of all allowed claims in full with interest. On April 9, 2009, the court entered an order authorizing
15 Trustee to make distributions on the final account, and requiring Trustee to retain all surplus funds
16 (approximately \$380,000) pending a determination on a disputed claim.

17 14. Abandonment of Prepetition Claims to Debtor

18 On June 15, 2009, the court entered an order abandoning to Debtor the bankruptcy estate's
19 interest in all prepetition causes of action. The court did so because Trustee stipulated to
20 abandonment, and because the estate appeared to have a surplus after payment of allowed claims.¹¹

21 15. Fu Defamation Action and Debtor's Cross-Claims (Adv. Proc. No. 10-3152)

22 On July 6, 2010, Fu filed a complaint against Debtor in San Francisco Superior Court¹²
23 seeking damages for a defamatory statement Debtor allegedly made about Fu in 2010 (the Fu

24
25 ⁹ Case No. 08-478364. On January 7, 2011, the Superior Court signed an order
26 consolidating the Cheuk Yan Action with the Second State Court Action and Superior Court Case
27 No. 08-478315. See *infra* p. 11 note 15.

28 ¹⁰ Docket No. 21, Exh. I, Adv. Proc. No. 10-3149.

¹¹ The order inadvertently was entered in *Fu v. Yan*, Adv. Proc. 08-3166, rather than in the
main bankruptcy case.

¹² Case No. 10-501321.

1 Defamation Action). In response, Debtor filed cross-claims against Fu, Chen, Lei, Wei Suen, and
2 Bryant Fu, asserting three claims involving acts committed before Debtor's December 19, 2004
3 bankruptcy petition.

4 In his cross-claim for intentional of emotional distress, Debtor alleges that, "from 2000 to
5 2010," Fu, Lei, and Chen conspired to cause Debtor extreme emotional distress by fraudulently
6 inducing Debtor to give Fu trust deeds and promissory notes, by wrongfully instigating foreclosure
7 actions on those deeds, by withholding and concealing business information, by defrauding Debtor in
8 joint development projects, by taking delivery of construction material without paying for it, and by
9 causing Debtor's bankruptcy. The cross-claim does not allege with specificity any act by defendants
10 occurring after the December 19, 2004 petition date.

11 Debtor's cross-claim for breach of fiduciary is based on a 1997 joint venture between Debtor
12 and Fu to develop real property, including the Chenery Property. The cross-complaint alleges, *inter*
13 *alia*, that "from 2002 to July 2010," Fu, Lei, and Chen acted in concert to deprive Debtor of his just
14 share of the Chenery Property sale proceeds and profits.

15 Debtor's cross-claim for fraudulent transfer vaguely alleges that, around the year 2000, Fu
16 and Lei divorced as a ploy to shield their assets from Fu's creditors. The claim further alleges that
17 Fu transferred real property to Lei at the time of their divorce, and that Fu fraudulently transferred to
18 "the other Defendants" possession of his moneys, causes of action, contacts, agreements, and other
19 properties.

20 On August 31, 2010, Chen removed the Fu Defamation Action to this court on the basis that
21 the cross-claims alleged by Debtor: (a) affect property of the estate; (b) involve prepetition claims
22 that can be brought only by Trustee; (c) attack the integrity of final judgments issued by this court;
23 and (d) are barred by the doctrines of claim and issue preclusion.

24 On September 24, 2010, Lei, Suen, and Bryant Fu filed a Rule 12(b)(6) motion to dismiss the
25 cross-claims for intentional infliction of emotional distress and breach of fiduciary duty on the bases
26 that they are barred by the statute of limitations and that they fail to allege the existence of a
27 fiduciary relationship.
28

1 On September 23, 2010, Tony Fu filed a Rule 12(b)(6) motion to dismiss on the grounds that
2 the counterclaims against him are barred by the statute of limitations, claim preclusion, issue
3 preclusion, and fail to state a claim upon which relief can be granted.

4 On September 30, 2010, Debtor filed a motion to abstain and remand, arguing that this court
5 lacks subject-matter jurisdiction because the claims arose postpetition.

6 On October 14, 2010, Chen filed a Rule 12(b)(6) motion to dismiss Debtor's cross-claims on
7 the basis that those claims are barred by of claim preclusion, issue preclusion, and by the release
8 contained in the settlement agreement between Chen and Trustee.

9 16. Lei Adversary Proceeding (Adv. Proc. 10-3149)

10 On August 27, 2010, Lei filed a complaint against Debtor in this court (the Lei Action)
11 seeking: (1) to enjoin Debtor and Debtor's Father from asserting against her any prepetition claims
12 released by the bankruptcy estate; (2) a judicial determination that claims asserted by Debtor and
13 Debtor's Father in state court are prepetition claims released by the estate; and (3) damages for
14 Debtor's alleged breach of the settlement agreement between Lei and Trustee.

15 The prayer in the Lei Action seeks numerous judicial determinations, including, *inter alia*:
16 (1) that Debtor has committed fraud on the court; (2) that Debtor and Debtor's Father have no
17 ownership in the real property at 337 28th Avenue¹³ and that Debtor wrongfully placed a lien on such
18 property; (3) that Debtor's Father has no ownership interest in the Chenery Property; (4) that
19 Debtor's lawsuits against Lei have caused her financial and emotional harm; (5) that Debtor is in
20 contempt of court by "again and again litigating the Chenery Project"; and (6) that Debtor has failed
21 to obtain leave of court to sue Lei on prepetition claims that belong to the estate. The prayer also
22 seeks attorneys fees, costs, and exemplary damages.

23 Debtor filed a Rule 12(b) motion to dismiss the Lei Action on the following grounds:
24 (1) the complaint fails to state a claim for upon which relief can be granted for injunctive and
25 declaratory relief, because this court abandoned all prepetition claims to Debtor; (2) Lei cannot
26

27
28 ¹³ This real property was not scheduled by Debtor as property of the estate. Lei claims that
Trustee removed a lien placed by Debtor on this real property as part of Lei's settlement with
Trustee. The settlement does not mention this real property.

1 recover for damages for breach of Lei's settlement agreement with Trustee, because Debtor is not a
2 party to that agreement; (3) the court lacks subject-matter jurisdiction to determine the claims; and
3 (4) the court lacks personal jurisdiction over Debtor's Father.

4 **DISCUSSION**

5 1. Determination to Vacate Order Abandoning Assets to Debtor

6 On June 15, 2009, this court entered an order abandoning the remaining assets of the estate to
7 Debtor. The court did so because the estate appeared to be solvent, and because Trustee did not
8 object.¹⁴

9 This court now determines that the order for abandonment should be vacated. As an exercise
10 of its discretion under 11 U.S.C. § 554(c), this court also determines that the prepetition claims that
11 passed to the estate on the petition date should not be abandoned to Debtor upon the closing of the
12 case. The court takes these two steps for the following reasons.

13 First, Debtor improperly attempted to assert prepetition claims that belonged to the estate
14 after a trustee had been appointed and before those claims were abandoned to Debtor. Ms. Hoskins
15 was appointed as chapter 11 trustee on May 12, 2006, and has continued to serve as the chapter 7
16 trustee since the court converted the case on September 15, 2006. Once Trustee was appointed,
17 Debtor lost all authority to bring the prepetition claims at issue. 11 U.S.C. §§ 323, 541, 704, 1106.
18 Yet after Trustee was appointed, Debtor filed at least two state court actions asserting prepetition
19 claims that could be brought only by Trustee.¹⁵ Debtor's assertion of prepetition claims after
20 appointment of a trustee constituted a violation of the automatic stay, as it constituted an attempt to
21 exert control over property of the estate. 11 U.S.C. § 362(a)(3).

22
23 ¹⁴ As set forth above, on April 9, 2009, the court entered an order approving Trustee's
24 final account and authorizing her to pay all allowed claims in full with interest. After
that distribution, the trustee had \$380,000 in surplus funds.

25 ¹⁵ The First State Court Action was filed on July 2, 2007. The Third State Court Action was
26 filed and January 24, 2008. Both of these Actions were filed after Trustee's appointment and prior
27 to this court's abandonment of prepetition claims to Debtor on June 15, 2009. Although not raised
28 by the parties, the court discovered on the docket of the Second State Court Action a possible third
action filed by Debtor prior to entry of the order abandoning prepetition claims to him, in which
Debtor asserts claims against Siu Ma, Charles Li, and Tony Fu based on prepetition conduct (San
Francisco Superior Court Case No. 08-478815). That action was filed on August 19, 2008, which is
after appointment of the Trustee and prior to entry of the order abandoning claims to Debtor.

1 Second, Debtor asserted prepetition claims against Lei, Suen, and Chen after those claims had
2 been released by Trustee. With the express permission of this court, Trustee executed settlement
3 agreements with Chen in July 2006, Suen in March 2008, and Lei in May 2008. Each of the
4 settlement agreements contained broad releases that included all prepetition claims that had passed
5 from Debtor to the bankruptcy estate on the petition date. Yet in March 2010, Debtor asserted
6 prepetition claims against Lei in his second amended complaint in the Second State Court Action,
7 and in August 2010 asserted prepetition claims against Lei, Suen, and Chen in the Fu Defamation
8 Action.

9 Third, Debtor asserted prepetition claims against Fu that were barred by the Bankruptcy
10 Court Judgment, and then asserted the same claims a second time after this court had dismissed
11 Debtor's prepetition claims as barred. On January 8, 2008, this court dismissed with prejudice the
12 claims that Debtor asserted against Fu in the First State Court Action (which had been removed to
13 this court). This court determined that the claims asserted in that action concerned the Chenery
14 Property, that those claims had been adjudicated in the Bankruptcy Court Judgment, and that those
15 claims were thus barred by principles of claim and issue preclusion. Less than three weeks later,
16 Debtor filed the Third State Court Action, in which Debtor once again asserted claims against Fu
17 concerning the Chenery Street project. Debtor alleged these same claims yet again in 2010 as
18 counterclaims to Fu's postpetition defamation claim.

19 Fourth, I find that the acts described above were not the product of good faith mistake.
20 Debtor is not ignorant of the law. He attended law school, has been a member of the California Bar
21 since December 1, 2008, and has been representing himself in this case since October 2006. The fact
22 that Debtor's assertion of prepetition claims was wrongful in three separate ways (asserting claims
23 that belonged to Trustee, that had been released, and that previously had been adjudicated against
24 him) makes it difficult to find that any of the three types of wrong was the product of good faith
25 mistake.

26 Fifth, it is essential to the proper administration of bankruptcy cases that a trustee have power
27 to administer assets of the estate free from interference by the debtor. Both the estate and affected
28 creditors will be harmed if a trustee is unable to give an effective release of claims belonging to the

1 estate as part of a court-approved settlement. The estate will be harmed in negotiating settlements of
2 claims belonging to the estate if a debtor is not strictly barred from asserting the same claims that
3 have been settled by a trustee.

4 Sixth, Chen, Lei, Suen, and Fu have submitted their claims to this court for resolution. It is
5 appropriate for this court to take all appropriate acts to enforce the rights those parties have
6 established in litigation or by settlement with Trustee. I determine that it will be easier for those
7 parties to enforce their rights against Debtor if Debtor is barred from bringing any prepetition claims
8 that passed to the estate.¹⁶ This is so, because it may be easier for another court in which Debtor may
9 bring a subsequent claim to determine whether Debtor asserts claims arising before the petition date
10 than to determine whether Debtor asserts claims barred by some other doctrine.

11 In determining that prepetition claims that passed to the estate should not be abandoned to
12 this Debtor now or upon closing of the case, I note and rely upon the misconduct described above,
13 the lack of any reason to believe that the acts in question were the result of a good faith mistake, the
14 deterrent effect on Debtor and others that may result from barring abandonment of the claims to
15 Debtor, and the ease in enforcement of their rights that may accrue to the parties most aggrieved by
16 Debtor's misconduct (Chen, Lei, Suen, and Tony Fu) as a result of barring such abandonment.

17 **2. Debtor's Motion to Dismiss the Lei Action**

18 In Lei v. Yan, Adv. Proc. No. 10-3149, the court currently has before it Debtor/Defendant
19 Yan's Rule 7012(b) motion to dismiss.

20 The court denies Debtor's motion to dismiss for lack of subject-matter jurisdiction, denies
21 Debtor's motion to dismiss the claims for injunctive and declaratory relief for failure to state a claim,
22 and grants Debtor's motion to dismiss Lei's claim for damages to the extent that claim depends upon
23 Trustee's settlement agreement with Lei.

24 **a. Subject-Matter Jurisdiction**

25 This court has "related to," "arising in," and "arising under" jurisdiction to determine Lei's
26 affirmative claims for injunctive relief, declaratory judgment, and damages. 28 U.S.C. § 1334(b).

27 ¹⁶ Chen, Lei, Suen, and Fu are barred from asserting prepetition claims against Debtor by
28 virtue of the discharge Debtor was granted on June 26, 2007. There is no evidence before the court
that these creditors have in any way violated that discharge.

1 The court has "related to" jurisdiction over these claims, because their adjudication requires
2 this court to determine whether the legal claims Debtor asserts against Lei in various state-court
3 actions arose prepetition and passed to the bankruptcy estate pursuant to 11 U.S.C. § 541. The
4 resolution of legal claims owned by the estate conceivably could have an effect on the estate's rights
5 and liabilities. Fietz v. Great Western Savings (In re Fietz), 852 F.2d 455, 457-58 (9th Cir. 1988);
6 Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d. Cir. 1984).

7 The court has "arising in," and "arising under," jurisdiction over the claims for relief brought
8 by Lei, because Trustee's power to administer the estate includes the power to settle prepetition
9 claims of Debtor that pass to the estate, because it is essential to the *effective* administration of the
10 estate that Trustee be able to prevent Debtor from prosecuting claims that have settled by Trustee,
11 and because section 105 of the Bankruptcy Code provides that a bankruptcy court may issue any
12 order necessary or appropriate to carry out the provisions of the Bankruptcy Code.

13 **b. Claims for Injunctive and Declaratory Relief**

14 The court denies Debtor's motion to dismiss Lei's claims for injunctive and declaratory
15 relief. The claim for injunctive relief states a claim upon which relief can be granted, because the
16 complaint alleges that Debtor is attempting to prosecute against Lei prepetition legal claims that
17 passed to the bankruptcy estate and were released by the trustee. The claim for declaratory relief
18 states a claim upon which relief can be granted, because the complaint alleges that a dispute
19 currently exists between Lei and Debtor regarding whether the state-court actions Debtor is pursuing
20 assert prepetition claims of Debtor that became property of the bankruptcy estate and were released
21 by Trustee.¹⁷

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26 ¹⁷ The court does not enter injunctive and declaratory relief at this time, because the only
27 motion pending before the court is Debtor's Rule 12(b)(6) motion to dismiss. The court notes,
28 however, that such relief would likely be granted on summary judgment, because there appears to be
no dispute regarding the validity or scope of the release, and because Debtor's pleadings in the State
Court Actions and the Fu Defamation Action indicate that Debtor is asserting prepetition claims that
have been released by Trustee.

1 c. Claim for Damages for Breach of the Settlement Agreement

2 The court grants with prejudice Debtor's motion to dismiss Lei's claims for damages to the
3 extent the claim for damages is based upon Debtor's breach of the settlement agreement, because
4 Debtor was not a party to the settlement agreement Lei seeks to enforce.¹⁸

5 3. Fu Defamation Action: Motions to Dismiss Cross-Claims: Motion to Remand

6 In Fu v. Yan, Adv. Proc. No. 3152, the court currently has before it motions by cross-
7 defendants Chen, Lei, Suen, Tony Fu, and Bryant Fu to dismiss Debtor's cross claims for failure to
8 state a claim upon which relief can be granted. The court also has before it Debtor's motion to
9 remand the Fu Defamation Action to state court.

10 The court construes the motions of Chen, Lei, and Suen as motions for summary judgment,
11 because their motions rely upon the release of claims granted by Trustee and approved by this court,
12 and because the release and order are not incorporated by reference into the cross complaint.¹⁹ The
13 court grants the motions for summary judgment, because the cross-complaint itself reveals that it
14 asserts prepetition claims, and because Trustee's release of such claims is a matter of public record.
15 The court grants Tony Fu's motion to dismiss Debtor's counterclaims against him, because those
16 claims are barred by principles of issue and claim preclusion, and because the counterclaims assert
17 prepetition claims that passed to the bankruptcy estate and can be prosecuted only by Trustee. The
18 court grants Bryant Fu's motion to dismiss, on the basis that the cross-claim against him is also a
19 prepetition claim that can be prosecuted only by Trustee.

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23 ¹⁸ The complaint attaches the settlement agreement and related order as exhibits. In ruling
24 upon a motion to dismiss, the court may consider the contents of these documents, because the
25 authenticity of the documents is not contested. Farrino v. FHP, Inc., 146 F.3d 699, 705-06 (9th Cir.
26 1998); Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994) (overruled on other grounds in Galbraith
v. County of Santa Clara, 307 F.3d 1119, 1127 (9th Cir. 2002)). The court may consider such
documents without converting the motion to dismiss into a motion for summary judgment. Kniesel
v. ESPN, 393 F.3d 1068, 1076-66 (9th Cir. 2005).

27 ¹⁹ Only Chen moved to dismiss the cross claims on the basis of the release. Because the
28 court grants the motions to dismiss to with leave to amend, and because Trustee's releases of claims
against Lei and Suen are similar to Trustee's release of claims against Chen, the court raises on its
own motion the effect of Trustee's releases of Lei and Suen.